

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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DEFENDERS OF WILDLIFE,  
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

DAVID BERNHARDT, in his official capacity )  
as Secretary of the United States Department of )  
the Interior, et al., )

Defendants,

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No. 1:19-cv-02936

**STIPULATED SETTLEMENT AGREEMENT**

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Defenders of Wildlife (“Defenders”) and Center for Biological Diversity (“CBD”) (collectively “Plaintiffs”) and Defendants David Bernhardt, in his official capacity as Secretary of the United States Department of the Interior (“Interior”), the United States Fish and Wildlife Service (“Service”), and Aurelia Skipwith, the Director of the Service (collectively, “Defendants”), who, by and through their undersigned counsel, state as follows:

WHEREAS, on June 1, 2018, the Service received from CBD a new petition to list the dunes sagebrush lizard (*Sceloporous arenicolus*) as a threatened or endangered species under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*;

WHEREAS, on July 19, 2019, Plaintiffs sent a letter to Defendants stating their intent to file suit to compel the Service to complete a “90-day finding” in accordance with 16 U.S.C. § 1533(b)(3)(A) as to whether the petition “presents substantial scientific or commercial information indicating that the petitioned action may be warranted”;

WHEREAS, on September 13, 2019 the Service sent a response to the notice of intent

to sue explaining that it was in the final stages of completing the 90-day finding;

WHEREAS, on October 1, 2019, Plaintiffs filed a complaint in the above-captioned action to compel the Service to complete the action identified above by date certain, *see* Docket (“Dkt.”) 1 (“Complaint”);

WHEREAS, the parties, by and through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs’ claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs’ Complaint;

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. On or before June 30, 2020, the Service shall submit to the Federal Register a determination as to whether the June 1, 2018 petition to list the dunes sagebrush lizard “presents substantial scientific or commercial information indicating that the petitioned action may be warranted,” pursuant to 16 U.S.C. § 1533(b)(3)(A).

2. The order entering this Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the parties filed with and approved by the Court, or upon written motion filed by one of the parties and granted by the Court. In the event that either party seeks to modify the terms of this Agreement, including the deadline specified in paragraph 1, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either party believes that the other party has failed to comply with any term or condition of this Agreement, the party seeking the modification, raising the dispute, or seeking enforcement shall provide the other party with notice of the claim.

The parties agree that they will meet and confer (either telephonically or in person) at the earliest possible time in a good-faith effort to resolve the claim before seeking relief from the Court. If the parties are unable to resolve the claim themselves, either party may seek relief from the Court.

3. In the event that Defendants fail to meet the deadline specified in paragraph 1 and have not sought to modify it, Plaintiffs' first remedy shall be a motion to enforce the terms of this Agreement, after following the dispute resolution procedures described above. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

4. This Agreement requires only that the Service take the action specified in paragraph 1. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the ESA, the Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or procedural. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to the Service by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any determination required herein. To challenge any final determination issued in accordance with this Agreement, Plaintiffs will be required to file a separate action, and Defendants reserve the right to raise any applicable claims or defenses in response thereto.

5. The obligations imposed on the Service under this Agreement can only be undertaken using appropriated funds. No provision of this Agreement shall be interpreted as, or shall constitute, a commitment or requirement that the United States is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provisions of law.

6. No part of this Agreement shall have precedential value in any litigation or in representations before any court or forum or in any public setting. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable

timeline for making determinations regarding the listing of or designation of critical habitat for any species.

7. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession of any wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement or any similar claims brought in the future by any other party. Except as expressly provided in this Agreement, the parties do not waive or relinquish any legal rights, claims, or defenses they may have. This Agreement is executed for the purpose of settling Plaintiffs' Complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.

8. Plaintiffs reserve their right to request attorneys' fees and costs from Defendants, and Defendants reserve their right to contest Plaintiffs' entitlement to recover fees and the amount of any such fees and do not waive any objection or defenses they may have to Plaintiffs' request.

9. The Parties agree to the following schedule for addressing attorneys' fees and costs:

- a. Within 30 days of the entry of the order by this Court approving this Agreement, Plaintiffs will provide to Defendants an itemization of the attorney's fees and costs it seeks to recover to allow Defendants to assess whether settlement of such claims is possible.
- b. Within 60 days of Defendants' receipt of this itemization of Plaintiffs' proposed fees and costs, the parties will notify the Court whether they have reached a settlement as to the payment of Plaintiffs' attorneys' fees and costs by Defendants.
- c. If the parties have not reached agreement on attorneys' fees and costs at the time they provide this post-receipt notice to the Court, Plaintiffs may move within 30 days of that date for the Court to award attorneys' fees and costs.

Briefing and adjudication of Plaintiffs' motion for attorneys' fees and costs and Defendants' opposition thereto will then proceed as provided in LCvR 7.

10. Plaintiff reserves the right to seek additional fees and costs incurred subsequent to this Agreement arising from a need to enforce or defend against efforts to modify the underlying schedule outlined in paragraph 1 or for any other continuation of this action. By this Agreement, Defendants do not waive any right to contest fees claimed by Plaintiff or Plaintiff's counsel, including hourly rates and the number of hours billed, in any future litigation or continuation of the present action. Further, this Agreement as to attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

11. The parties agree that this Agreement was negotiated in good faith and it constitutes a settlement of claims disputed by the parties. By entering into this Agreement, the parties do not waive any legal rights, claims, or defenses, except as expressly stated herein. This Agreement contains all of the terms of agreement between the parties concerning Plaintiff's Complaint, and is intended to be the final and sole agreement between the parties with respect thereto. The parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

12. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Agreement and do hereby agree to the terms herein. Further, each party, by and through its undersigned representative, represents and warrants that it has the legal power and authority to enter into this Agreement and bind itself to the terms and conditions contained in this Agreement.

13. The terms of this Agreement shall become effective upon entry of an order by the Court approving the Agreement.

14. Upon approval of this Agreement by the Court, all counts of Plaintiffs' complaint shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

Dated: April 30, 2020

Respectfully submitted,

/s/ Jason C. Rylander  
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*Attorneys for Plaintiffs*

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2020, I electronically filed the foregoing Stipulated Settlement Agreement with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Shampa A. Panda  
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